

Senate Bill No. 837

CHAPTER 272

An act to amend Sections 6611, 12125, 12126, and 12129 of, to amend and repeal Section 12128 of, and to repeal Section 12130 of, the Public Contract Code, relating to public contracts.

[Approved by Governor September 22, 2005. Filed with
Secretary of State September 22, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 837, Dutton. Alternative Protest Pilot Project.

Existing law provides for a pilot project for alternative protest procedures in connection with state agency acquisition of goods and services, including the acquisition of information technology goods and services, and requires the Department of General Services to administer the project until January 1, 2007, or until the pilot project has been applied to at least 25 contracts, including at least 5 information technology contracts, whichever occurs later.

This bill would delete the minimum contract attainment provisions, and would extend the repeal date until December 31, 2011, as specified. The bill would rename the project as the Alternative Protest Process.

This bill would also prohibit an unsuccessful bidder from using the Alternative Protest Process, and would instead provide for the filing of a writ of mandate, as specified.

Existing law requires the Department of General Services to submit electronically to the Legislature a report regarding the pilot project within 90 days after the termination of the project.

This bill would instead require the department to submit to the Legislature a report and recommendations regarding the Alternative Protest Process on or before January 1, 2007, and on or before January 1, 2010, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 6611 of the Public Contract Code is amended to read:

6611. (a) Notwithstanding any other provision of law, the Department of General Services may, relative to contracts for goods, services, information technology, and telecommunications, use a negotiation process if the department finds that one or more of the following conditions exist:

(1) The business need or purpose of a procurement or contract can be further defined as a result of a negotiation process.

(2) The business need or purpose of a procurement or contract is known by the department, but a negotiation process may identify different types of solutions to fulfill this business need or purpose.

(3) The complexity of the purpose or need suggests a bidder's costs to prepare and develop a solicitation response are extremely high.

(4) The business need or purpose of a procurement or contract is known by the department, but negotiation is necessary to ensure that the department is receiving the best value or the most cost-efficient goods, services, information technology, and telecommunications.

(b) When it is in the best interests of the state, the department may negotiate amendments to the terms and conditions, including scope of work, of existing contracts for goods, services, information technology, and telecommunications, whether or not the original contract was the result of competition, on behalf of itself or another state agency.

(c) (1) The department shall establish the procedures and guidelines for the negotiation process described in subdivision (a), which procedures and guidelines shall include, but not be limited to, a clear description of the methodology that will be used by the department to evaluate a bid for the procurement goods, services, information technology, and telecommunications.

(2) The procedures and guidelines described in paragraph (1) may include provisions that authorize the department to receive supplemental bids after the initial bids are opened. If the procedures and guidelines include these provisions, the procedures and guidelines shall specify the conditions under which supplemental bids may be received by the department.

(d) An unsuccessful bidder shall have no right to protest the results of the negotiating process undertaken pursuant to this section. As a remedy, an unsuccessful bidder may file a petition for a writ of mandate in accordance with Section 1085 of the Code of Civil Procedure. The venue for the petition for a writ of mandate shall be Sacramento, California. An action filed pursuant to this subdivision shall be given preference by the court.

SEC. 2. Section 12125 of the Public Contract Code is amended to read:

12125. There is hereby established the Alternative Protest Process to be administered by the Department of General Services.

SEC. 3. Section 12126 of the Public Contract Code is amended to read:

12126. (a) Notwithstanding any other provision of law, any department or agency may use the solicitation and alternative protest procedures outlined in this chapter for solicitations authorized under Chapter 2 (commencing with Section 10290) or Chapter 3 (commencing with Section 12100). The Department of General Services shall develop procedures and guidelines for the implementation of this alternative protest process.

(b) To be eligible for this alternative protest process, the contracting department shall agree to participate in the Alternative Protest Process and the Department of General Services shall indicate that the proposed

solicitation shall be conducted as part of the Alternative Protest Process prior to release of the solicitation. Submission of a bid constitutes consent for participation in the Alternative Protest Process. Any protests filed in relation to the proposed contract award shall be conducted under the procedures set forth by the Department of General Services for the Alternative Protest Process.

(c) Notwithstanding any other provision of law to the contrary, any bid protest conducted under this chapter shall include one or more of the following alternative procedures:

(1) The Alternative Protest Process shall not prevent the commencement of work in accordance with the terms of any other contract awarded pursuant to this chapter. A contract may be entered into pending a final decision on the protest.

(2) The Department of General Services shall review the protest within seven days of the filing date to determine if the protest is frivolous. If determined to be frivolous, the protest shall not proceed under this chapter until the bidder posts a protest bond in an amount not less than 10 percent of the estimated contract value, as determined by the Department of General Services in the solicitation.

(3) The Director of General Services shall issue a decision within a period not to exceed 45 days from the date the protest is filed.

(4) Arbitration, as defined and established by the Department of General Services, shall be the resolution tool.

(d) Authority to protest under this chapter shall be limited to participating bidders.

(1) Grounds for major information technology acquisition protests shall be limited to violations of the solicitation procedures and that the protestant should have been selected.

(2) Any other acquisition protest filed pursuant to this chapter shall be based on the ground that the bid or proposal should have been selected in accordance with selection criteria in the solicitation document.

SEC. 4. Section 12128 of the Public Contract Code is amended to read:

12128. (a) The Alternative Protest Process shall continue until December 31, 2011. The Department of General Services shall apply this chapter to the following categories:

(1) Information technology and ancillary services.

(2) Material, supplies, equipment, and ancillary services.

(b) This chapter shall be operative until December 31, 2011, and as of that date is repealed, unless a later enacted statute that is enacted before December 31, 2012, deletes or extends that date.

SEC. 5. Section 12129 of the Public Contract Code is amended to read:

12129. The Department of General Services shall electronically submit a report and recommendations to the Legislature regarding the Alternative Protest Process on or before January 1, 2007, and on or before January 1, 2010. The report shall include the following:

(a) The percentage of bids with values under five hundred thousand dollars (\$500,000), under one million dollars (\$1,000,000), and over one

million dollars (\$1,000,000) or more that were not subject to the Alternative Protest Process that were protested.

(b) The percentage of bids with values under five hundred thousand dollars (\$500,000), under one million dollars (\$1,000,000), and over one million dollars (\$1,000,000) that were subject to the Alternative Protest Process that were protested.

(c) The number of protests determined to be frivolous by the Department of General Services, subject to this chapter, with corresponding data for solicitations issued pursuant to existing procedures.

(d) The percentage of contracts awarded under the Alternative Protest Process that were subsequently challenged in a court of law with corresponding data for solicitations issued pursuant to existing procedures.

(e) The length of time to resolve protests pursuant to this chapter and the corresponding data for solicitations issued pursuant to existing procedures.

SEC. 6. Section 12130 of the Public Contract Code is repealed.